IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 493 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MUSTAQBHAI KAIMBHAI QUSIYA

Appearance:

Mr. R.M. Chauhan APP for the appellant.

MR JD AJMERA for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 07/10/1999

ORAL JUDGEMENT

The respondents, who were placed on trial in the Court of the Chief Judicial Magistrate, Nadiad, in connection with the offences punishable under Section 325, 324, 323 read with Section 114 of the Indian Penal Code and Section 135 of the Bombay Police Act, came to be acquitted on 6th May 1991. Being aggrieved by such order of acquittal, the State has preferred this appeal.

2. Necessary facts, in order to appreciate the rival contentions, may, in brief, be stated. Ismailbhai Ganibhai deals in banana at Nadiad. Near Ahmedabadi

Darwaja he is having a shop. The respondents also deal in banana and they have their shop in the same locality. On 11th October 1988 at 18.00 hours the respondent No.3 had gone to his shop taking the tempo. The tempo was parked near the Pan Galla of Yusufbhai, the brother of Ismailbhai Ganibhai who is the complainant. Yusufbhai requested the respondent No.3 to take the tempo away so that he may have sufficient space for convenient passage. The respondent No.3 was annoyed. He was having the iron-bar in his hand. He assaulted Ismailbhai Ganibhai and caused injury on the right shoulder. At that time the respondent No.1 also came there rushing and caused injury to Ismailbhai Ganibhai by a knife he was having. Yusufbhai and his brother sustained injuries on left shoulder. Another Yusufbhai and Sulemanbhai intervened and saved the injured person. The injured were taken to the hospital for necessary treatment. From the hospital the police was informed and FIR came to be lodged. A chargedsheet against the respondents relating to the offences punishable under Section 323, 324, 325 read with Section 114 Indian Penal Code and Section 135 of the Bombay Police Act came to be filed in the Court of the Judicial Magistrate, Nadiad, after the investigation was over. It was registered as Criminal Case No. 7012 of 1988. The learned Chief Judicial Magistrate framed the charge and recorded the plea of the respondents. The respondents pleaded not guilty and claimed to be tried. The prosecution then adduced necessary evidence. Appreciating the evidence before him, the learned Chief Judicial Magistrate reached the conclusion that the prosecution had failed to establish the charge levelled against the respondents. He found that about the injuries and the fact who caused the injuries there were contradictions and discrepancies in evidence. The injured and two other witnesses examined in support of the case were all brothers. They were the interested witnesses and their evidence was not, in the absence of independent and cogent corroboration, credible. He therefore acquitted the respondents. It is against that acquittal order, the prosecution has filed this appeal calling in question the legality and validity of acquittal.

3. Mr. K.P. Raval, learned APP took me to the entire evidence on record and submits that the learned Chief Judicial Magistrate has fallen into error in appreciating the evidence and acquitting the respondents. Simply because the witnesses are brothers, their evidence ought not to have been discarded on the ground that they are interested. The doctors, who examined the injured and treated in the hospital, do in clear terms support

the case of the prosecution. When the doctors are supporting the injured, there was no reason to acquit the respondents. The learned Judge ought to have placed reliance on the evidence of the injured especially when they were supported by the doctors and convicted the respondents.

4. At the time of submission, when a query was made to the learned APP, he has tapered off his submission confining to the only submission regarding genesis of the incident. I will therefore confine myself to the only point going to the root of the case.

5. Admittedly, a cross-complaint is also filed against the injured and their brothers alleging that the injured and their brothers assaulted first and caused serious injuries to respondent No.3 and Safibhai Yusufbhai. Against them the complaint was lodged and to save their skin they engineered a complaint against them and filed a false case.

6. In the case of Lakshmi Singh & Others etc., Vs. State of Bihar - AIR 1976 SC 2263, it is made clear that the prosecution is bound to explain the visible and serious injury found on the person of the accused failing which it can be said that the prosecution is suppressing the genesis of the incident. In other words, it can be said that the prosecution is suppressing the manner in which the incident happened and in that case the accused has to be acquitted giving him a benefit of doubt. Dr. Mathews examined at Ex.25 has admitted that on 11th October 1988 he examined the complainant and his brothers who were injured and gave treatment. At the same time, Safibhai Yusufbhai and respondent No.3 were also brought to the hospital. He also examined them and found that on their person the injuries were visible and the same were bleeding injuries. From such evidence,it is clear that on the person of the respondent No.3 and Safibhai not only visible but serious injuries were found. It was, therefore, incumbent upon the prosecution to explain about the injuries. Unfortunately, no evidence explaining the injuries found on the person of respondent No.3 and Safibhai, is adduced and prosecution has,for the reasons best known to it, abstained from offering the explanation. When no explanation for no good reason is offered, it can be assumed that the prosecution has suppressed the manner in which the incident happened and that casts clouds of doubt onthe entire wrap and woof of the prosecution story. In view of the fact,the respondents are entitled to the benefit of doubt that arises in this case. The learned APP, when a further

query is made, fails to point out even iota of evidence on record removing the doubt that arises, although he has laboured much, so as to find out something favouring the prosecution.

7. For these reasons, the learned Chief Judicial Magistrate was perfectly right in acquitting the respondents and I see no justifiable reason to interfere with the order of acquittal. The appeal, being devoid of merits, is hereby dismissed and the order of acquittal is maintained.

.....

(rmr).